

PROSECUTE SOCIALISTS, NEWTON DEMANDS; SENDS EVIDENCE TO FEDERAL OFFICIALS; SHOOT OR SEAT THEM, SAYS LAGUARDIA

EXPECT GRAND JURIES TO ACT

District Attorneys Also to Get Copies of Evidence

COMMITTEE COUNSEL SUM UP

**Brief Affirms Suspended Assem-
blymen Should Be Convicted
Under Espionage Act.**

CALLED TRAITORS TO NATION

**Expulsion from Assembly De-
manded—Destruction of Gov-
ernment Declared Their Aim.**

Special to The New York Times.

ALBANY, Feb. 12.—Treason to State and nation is charged against the five suspended Socialist Assemblymen, their prosecution by State and Federal authorities recommended, and the Socialist Party declared an outlaw in a brief summing up the evidence presented against them at the investigation now in progress before the Assembly Judiciary Committee.

The brief, submitted ostensibly for the "guidance" of the defense, is signed by Attorney General Newton, but was prepared by ex-Senator Elon R. Brown of counsel for the committee. It was filed with the committee today, and copies were sent to each member of the Assembly.

The office of the Attorney General was closed today, but it was learned on unquestionable authority that verified copies of the testimony will before many hours be in the hands of the District Attorneys of New York, Bronx and Kings Counties for presentation to their respective Grand Juries, and will be sent as well to the United States District Attorneys for the Southern and Eastern Districts of New York for use in proceedings before Federal Grand Juries.

"These men are denied the right to seats in the Assembly," the brief states, "because they seek to destroy the government of the State and nation and are traitors to both. The inherent power of sovereign legislative and parliamentary bodies to exclude or expel members for cause is universally recognized.

"A decent regard for the Assembly as the popular representative house of the State requires that these five Assemblymen be excluded from their seats. They have taken a false oath to secure seats which they cannot occupy as gentlemen, patriots, loyal citizens or Assemblymen. They come here under the false pretense of being loyal to their Government, when in fact they are really citizens of the Internationale, and desire above all things the destruction of this Government."

According to counsel for the Judiciary Committee the Gitlow case, which ended yesterday with the imposition of a sentence of from five to ten years on the defendant, ex-Socialist Assemblyman Benjamin Gitlow, presents a parallel. Gitlow sat with three of the five suspended Socialists in the 1918 Assembly when there were ten Socialist members of the lower house.

According to some of the committee, the beginning of criminal proceedings against the Socialist Assemblymen should automatically put an end to the proceedings before the committee. Thus the Socialists would lose the opportunity they have counted on of getting the aims and principles of their party on record.

Points in the Brief.

These points are set forth in the brief:

1. The five Assemblymen, by pledging themselves as members of the Socialist Party, not to "vote to appropriate moneys for military or naval purposes or war," disqualified themselves from taking the constitutional oath of office as Assemblymen, and the oath as taken by them was false.

2. The five Assemblymen, by their promise to take directions from the dues paying members of their "locals" or their "Executive" Committee in all matters arising in the Assembly, including their vote for all appointees and officials chosen by the Legislature; to vote as a unit with the other members of their party on all occasions, and to place their resignations in the hands of the dues paying members to insure the performance of their pledge, abdicated their functions as Assemblymen and disqualified themselves from taking the oath of office and rendered their oath false.

3. The Socialist Party is a revolutionary party, having the single purpose of destroying our institutions and Government, which they abhor, and substituting the Russian Soviet Government or the proletariat Government instead, to be controlled by themselves. This appears from their platforms and propaganda.

4. The Socialist Party is not a national party, like the Democratic Party or the Republican Party, whose aim is to conserve and preserve the nation. The Socialist Party is an anti-national party, whose allegiance is given to the Internationale and not to the United States, whose Government and institutions it would destroy.

5. "Mass action" and the "general strike" are advocated and urged by the

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Socialist Party as a part of the plan to bring about conditions favorable to revolution, and as instruments of revolution, and not to remedy industrial evils. The revolutionary purpose and non-political character of such acts make them treasonable, and, whether criminal or not in the absence of such purpose, treasonable with it.

6. The five Assemblymen stand squarely with their party for the overthrow of our Government. Three of them—Claessens, Solomon and Waldman—avowed these doctrines as candidates for the Assembly.

7. The five Assemblymen by their pledges and speeches, have rendered themselves amenable to the terms of the Espionage act and should be convicted under its terms.

8. It is the supreme duty of the Assembly and its loyal members, who have taken an oath to support the Constitution of the State of New York and the Constitution of the United States, to exercise their ample power to exclude from the legislative body of the greatest State in the Union enemies of the State and of the United States, who would destroy both constitutions and the Governments organized under them. Tolerance of such a presence would involve a breach of their oath as loyal men and Assemblymen.

The votes of the Socialist Assemblymen on military and naval appropriations while the country was at war are cited as evidence that the pledge made by them to their party not to vote appropriations for either offensive or defensive warfare was regarded by them as more binding than the obligation they assumed to uphold the State Constitution. The brief declares that evidence upon the record shows that the Socialists virtually abdicated their functions as Assemblymen by their promise to subordinate their conscience and patriotism on every vote in the Assembly to the block system of party voting; by their promise whenever directed by the dues-paying membership to vote in any particular manner on any bill or as to the appointment or selection of any of the numerous public officials to be chosen by the Legislature, and by promising to resign in advance of taking office as a pledge of their performing their promise.

Control of Dues Paying Members.

Under the National Constitution of the Socialist Party, says the brief, the dues paying membership or the executive committee having control over the official action of the Assemblyman, might be composed wholly of aliens and is so composed in part. The brief estimates that from 150 to 200 dues paying members control Waldman's district and between 200 and 300 Claessens's district.

Speeches by Assemblymen Claessens, Solomon and Waldman are quoted in

support of the contention that they stand solidly with the party for the overthrow of the Government.

To back up the recommendation that the five Assemblymen be prosecuted under the Espionage act, the brief quotes from a decision of Justice Garvin of the United States Circuit Court in the case involving the three Socialists who were convicted in Syracuse of violating the law through the distribution of inflammatory literature:

A statement was made public tonight on behalf of the Socialists in which it was hinted that they were ousted because they were hostile to increased fare legislation, soon to be introduced.

"We came to Albany thoroughly prepared to fight the traction thieves to the last ditch," the statement said. "We came to offer a constructive traction program—a way out of the chaotic financial condition of the roads. We stand ready to convict the traction interests out of their own mouths. To what extent these same interests were responsible for the removal of their sworn opponents from the Assembly only time will tell."